IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE MR. JUSTICE P.S. NARAYANA

WRIT PETITION NO. 24267 OF 2006

DATED: 22-11-2006

BETWEEN:

M/s. Linga Paradise Furniture & Jewellery,
Rep. by Linga Prakash, S/o. Linga Laxmaiah,
Age 48 years, C/o. 9-3-13, Regimental Bazar,
Secunderabad and 14 others

.....Petitioners

AND

The Additional Commissioner, MCH, Secunderabad

.....Respondent

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THE HON'BLE MR. JUSTICE P.S. NARAYANA

WRIT PETITION No. 24267 OF 2006

ORDER:

This matter is coming up for admission. The writ petition is filed for a writ of mandamus declaring that the respondent is not entitled to levy and collect advertisement charges under Sections 420 and 421 of the Hyderabad Municipal Corporation Act, 1955 and consequently declare the impugned action of the respondents as illegal, unconstitutional, violative of fundamental rights of the petitioners and to pass such other suitable orders.

Several factual details are narrated in the affidavit filed in support of the writ petition. It is also brought to the notice of the Court that similar writ petitions being Writ Petition No.5825 of 2006 and batch had been disposed of by this Court on 08-09-2006. Para 12 of the said order reads as under:

> "In the light of the fact-situation, wherever the statute ordains a particular act to be done in a particular manner, the same may have to be done as specified therein unless and otherwise any other procedure be permitted to be followed in accordance with law. There cannot be any two opinions relating to this aspect. Making demand, collection of fee or collection of tax, these are all aspects governed by specific statutory provisions. It is needless to say that the Municipal Corporation of Hyderabad being creation of a statute and being a statutory body, the duties expected to be discharged are performed by the Corporation to be performed by the Corporation itself or through its officials and the realm or the operation of the private agencies and the scope and ambit thereof in relation thereto would be very very limited. This Court is not inclined to express any opinion relating to the contract said to have been entered by the Corporation in favour of a private agency. This Court is also not inclined to express any further opinion whether the private agency who had been entrusted with this duty had made excessive demands or only such demands which were specified by the Municipal Corporation as

such. But however, in the light of the language employed in Section 421 of the Act, this Court is of the considered opinion that to attract the provisions of Section 421 of the Act, the Corporation must satisfy itself first that the provisions are attracted and hence the fee/demand can be levied. This exercise to be made in individual cases and in the peculiar facts and circumstances especially in the light of the decision of the Apex Court referred (7) supra and also the views expressed by the Division Bench of this Court referred (2) supra, this Court is of the considered opinion that the impugned demand notices as such cannot be sustained and accordingly the said demands made are hereby quashed and the matters are remitted to the Corporation to give opportunity to the individual writ petitioners to make their individual representations and let the Corporation consider and look into such objections which would be raised by the respective writ petitioners and pass appropriate orders in this regard in accordance with law. Accordingly, let the petitioners make such representations as early as possible, preferably within a period of four weeks and the Corporation to take an early decision in relation thereto thereafter."

It is needless to say that inasmuch as the facts of this case are similar to the said batch of writ petitions, this writ petition is also disposed of in terms of the directions, which had been specified supra. No order as to costs.

(P.S. NARAYANA, J)

Dated: 23-11-2006
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Note: Furnish copy by tomorrow.
B/O
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